

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

ROBERT ELI FULLER,
Petitioner,

v.

R. NDOH,
Respondent.

Case No. 17-cv-3196-NJV (PR)

**ORDER FOR RESPONDENT TO SHOW
CAUSE**

Petitioner, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner was convicted in Santa Clara County, so venue is proper here. *See* 28 U.S.C. § 2241(d). Petitioner has paid the filing fee and consented to the jurisdiction of a Magistrate Judge.

BACKGROUND

A jury found petitioner guilty of battery causing serious bodily injury and assault by means of force likely to produce great bodily injury. Petition at 2. He was sentenced to 21 years in state prison. Petition at 1. He states his appeals were denied. Petition at 3.

DISCUSSION

Standard of Review

This court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of

1 habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court
2 must “specify all the grounds for relief available to the petitioner ... [and] state the facts supporting
3 each ground.” Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. “[N]otice’
4 pleading is not sufficient, for the petition is expected to state facts that point to a ‘real possibility
5 of constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d
6 688, 689 (1st Cir. 1970)).

7 **Legal Claims**

8 Petitioner’s sole ground for federal habeas relief is that his due process rights and right to a
9 fair trial were violated by the trial court’s issuance of a mutual combat jury instruction. This is
10 sufficient to proceed.

11 **CONCLUSION**

12 1. The clerk shall serve by regular mail a copy of this order, the petition and all
13 attachments thereto and a Magistrate Judge jurisdiction consent form on respondent and
14 respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a
15 copy of this order on petitioner.

16 2. Respondent shall file with the court and serve on petitioner, within fifty-six (56) days of
17 the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing
18 Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted.

19 Respondent shall file with the answer and serve on petitioner a copy of all portions of the state
20 trial record that have been transcribed previously and that are relevant to a determination of the
21 issues presented by the petition.

22 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
23 court and serving it on respondent within twenty-eight (28) days of his receipt of the answer.

24 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer, as
25 set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing Section 2254 Cases.

26 If respondent files such a motion, it is due fifty-six (56) days from the date this order is entered. If
27 a motion is filed, petitioner shall file with the court and serve on respondent an opposition or
28 statement of non-opposition within twenty-eight (28) days of receipt of the motion, and

1 respondent shall file with the court and serve on petitioner a reply within fourteen (14) days of
2 receipt of any opposition.

3 4. Petitioner is reminded that all communications with the court must be served on
4 respondent by mailing a true copy of the document to respondent's counsel. Petitioner must keep
5 the court informed of any change of address and must comply with the court's orders in a timely
6 fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
7 to Federal Rule of Civil Procedure 41(b). *See Martinez v. Johnson*, 104 F.3d 769, 772 (5th Cir.
8 1997) (Rule 41(b) applicable in habeas cases).

9 **IT IS SO ORDERED.**

10 Dated: June 21, 2017

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13 NANDOR J. VADAS
14 United States Magistrate Judge
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